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NO. 0293— P. 20— — — —

Application No.: 10/537,027  
Atty. Docket: 22409-00009-US1

Response to Action  
dated February 23, 2007

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**AMENDMENTS TO THE DRAWINGS**

1. Attached is a complete set of formal drawings which include replacement drawing sheets 1/16, 2/16, 4/16, 5/16, 6/16, 8/16, 11/16, 14/16, and 15/15. These replacement sheets include proposed drawing changes to Figures 1, 1A, 4-6, 8, 11, and 14-16, and are to replace the original drawing sheets 1-15.

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### REMARKS

1. In response to the Office Action mailed February 23, 2007, Applicants respectfully request reconsideration. Claims 1-14, 35 and 62 were last presented for examination. In the outstanding Office Action, all claims have been rejected. By the foregoing Amendments, 8 claims (claims 1, 5, 8-10, 12-14) have been amended, 8 claims (claims 2-4, 6, 7, 11, 35, 62) cancelled and 55 claims (claims 84-138) added. No new matter has been added. Thus, upon entry of this paper, claims 1, 5, 8-10, 12-14, and 84-138 will remain pending in this application. Of these 63 claims, four (4) claims (claims 1, 99, 119 and 131) are independent. Based upon the following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

#### *Art of Record*

2. Applicants acknowledge receipt of form PTO-892 listing additional references identified by the Examiner.
3. Applicants thank the Examiner for returning form PTO/SB/08a filed by Applicants on May 31, 2005, which has been initialed by the Examiner indicating that the Examiner has considered the references cited therein.

#### *Objections to the Drawings*

4. The Examiner has objected to Figures 1, 1A, 4-6, 8, 11 and 14-16. The figures have been amended to accommodate these objections. These figure changes are believed not to introduce new matter, and their entry is respectfully requested. Accordingly, Applicants respectfully request that the objections to the drawings be reconsidered and withdrawn.

#### *Objections to the Specification*

5. The Examiner has objected to the disclosure because of informalities related to components referenced in the figures which were not illustrated in the figures. Applicants have amended the specification to correct various informalities including making the specification consistent with the above-noted proposed drawing changes. These amendments to the specification are believed not to introduce new matter, and their entry is respectfully requested. Accordingly, Applicants respectfully request that the objections to the drawings be reconsidered and withdrawn.

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***Objections to the Claims***

6. Claims 1, 4, 5, 8, 9, 13, 35 and 62 have been objected to because of various informalities. Applicants have amended claims 1, 5, 8, 9, 13, 35 and 62 to accommodate the objections. The amendments are believed not to introduce new matter, and their entry is respectfully requested. Claims 4 has been cancelled, making the objection moot. Accordingly, Applicants respectfully request that the objections to claims 1, 4, 5, 8, 9, 13, 35 and 62 be reconsidered and withdrawn.

***Claim Rejections – 35 USC § 112, first paragraph***

7. Claims 10 and 11 have been rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the enablement requirement. Applicants have amended claim 10 to overcome this rejection. This amendment is believed not to introduce new matter, and its entry is respectfully requested. The rejection of claim 11 is overcome by the present amendment of claim 10. Applicants respectfully request that the rejections of claims 10 and 11 be reconsidered and withdrawn.

***Claim Rejections – 35 USC §101***

8. Independent claim 62 has been rejected under 35 U.S.C. §101, for reciting non-statutory subject matter. Applicants have cancelled and recast independent claim 62 as new independent claim 93 to overcome this rejection. New independent claim 93 recites a computer readable medium comprising program code instructions which, when executed by a processor, causes the processor to perform a method for performing a test. Applicants respectfully request that the rejection to claim 62 be reconsidered and withdrawn. Furthermore, Applicants assert that new independent claim 93 is in compliance with 35 U.S.C. §101 and respectfully request that it be entered as such.

***Claim rejections – 35 USC § 102***

9. Claims 1, 2, 35 and 62 have been rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,334,072 to Leysieffer (hereinafter, "Leysieffer"). Applicants have amended claims 1 and 2 and have recast claims 35 and 62 to overcome these rejections. Based on the above Amendments and the following Remarks, Applicants respectfully request that these rejections be reconsidered, and that they be withdrawn.

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10. With respect to independent claim 1, the Examiner asserts that Leysieffer teaches substantially all features of Applicants' invention as claimed, including "an interface that allows the recipient of the prosthesis to at least partially control at least some aspect of the tests performed on the prosthesis that is interfaced with the computer." (See, Office Action; page 10.) By the above Amendments and the following Remarks, Applicants respectfully traverse this assertion.

11. Leysieffer is directed to a fully implantable hearing system designed to rehabilitate either pure sensorineural hearing loss or combined conduction and inner ear hearing impairment. Leysieffer describes an implantable hearing system which allows for objectively evaluating the signal transfer function of the sensor (e.g., microphone) after the implantable device has been implanted. This objective evaluation is achieved through the use of an implanted measurement unit and a telemetry system comprising internal and external components which allow for an external display / evaluation unit to evaluate the sensed signals before the signals have been processed by other components of the implanted device. (See, Leysieffer, col. 3, ll. 2-26.)

12. As described in the specification of Leysieffer and shown in Figure 1, measurement system 13 in implant module 30 prepares information from sensor 10 (microphone) and relays it to telemetry system 110 so that data from sensor 10 (microphone) can be transmitted outside implant module 30 to display unit 112. This allows data from sensor 10 (microphone) to be evaluated objectively using an external evaluation unit, instead of relying on subjective data to evaluate the operation of the implanted system. (See, Leysieffer, col. 6, ll. 53-64.) Other embodiments are described in Leysieffer, such as an embodiment in which data from sensor 10 (microphone) is first processed by various implanted components before being transmitted via the telemetry system 110, to provide objective, though not direct, data about the signal data. (See, Leysieffer, col. 7, ll. 25-38.) The Leysieffer system receives data to evaluate and transmits programming information using evaluation system (PS) 120 and transmitting/reading head 121. (See, Leysieffer, col. 8, ll. 50-57.) A remote control unit 65 is also shown and described as being "used by the patient to adjust or change important hearing aid functions." (See, Leysieffer, Fig. 4, col. 8, ll. 64-67.) However, Leysieffer fails to teach a "system for performing a test... comprising... a *recipient interface configured to receive a control input from the recipient* of the hearing prosthesis and to cause said processor to perform said test *in response to said control input*" as recited by Applicants' independent claim 1. (See, Applicants' independent claim 1, as amended, above; emphasis added.)

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13. As noted above, Leysieffer describes testing, evaluating, programming the implanted device. Also as noted above, Leysieffer describes a patient only in the context of being able to adjust hearing aid functions using a remote control. No where does Leysieffer teach or suggest system for performing a test comprising an interface configured to receive a control input from the recipient, as claimed in Applicants' claim 1. Thus, Applicants respectfully assert that Leysieffer neither discloses nor suggests Applicants' invention as recited in independent claim 1. Accordingly, Applicants respectfully request that the rejection of independent claim 1 be reconsidered, and that it be withdrawn.
14. Independent claim 35 has been cancelled and recast as new independent claim 84. As discussed above, Leysieffer discloses a system which is used to obtain and evaluate objective, rather than subjective, data about the performance of its implanted device. However, Leysieffer fails to teach a "method for performing a test... comprising... receiving, at a recipient interface of the system, *test control inputs provided by the recipient; and performing, by the system, a test on the hearing prosthesis in response to said test recipient-provided control inputs*" as recited by Applicants' independent claim 84. (See, Applicants' independent claim 84, as amended, above; emphasis added.) Accordingly, Applicants respectfully request that the rejection of independent claim 35 be reconsidered, and that it be withdrawn.
15. Independent claim 62 has been cancelled and recast as new independent claim 93. As discussed above, Leysieffer discloses a system which is used to obtain and evaluate objective, rather than subjective, data about the performance of its implanted device. However, Leysieffer fails to teach a "computer readable medium comprising program code instructions which, when executed by a recipient-controlled processor-based system, cause the processor to perform a test method... comprising... receiving, at a recipient interface of the system, *test control inputs provided by the recipient; and performing, by the system, a test on the hearing prosthesis in response to said test recipient-provided control inputs*" as recited by Applicants' independent claim 93. (See, Applicants' independent claim 93, as amended, above; emphasis added.) Accordingly, Applicants respectfully request that the rejection of independent claim 62 be reconsidered, and that it be withdrawn.
16. Furthermore, Applicants assert that new independent claim 102 is allowable over Leysieffer and other art of record for reasons that are similar as those above for independent claims 1, 84, and 92.

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***Claim rejections – 35 USC § 103***

17. Claims 3-5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Leysieffer in view of U.S. Patent No. 5,626,629 to Faltys, et al. (hereinafter, "Faltys"). Claims 6, 7 and 12-14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Leysieffer in view of U.S. Patent No. 5,909,497 to Alexandrescu (hereinafter, "Alexandrescu"). Claims 8-11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Leysieffer in view of Alexandrescu and further in view of Faltys. Based on the above Amendments and following Remarks, Applicants respectfully request that these rejections be reconsidered, and that they be withdrawn.

18. These dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter which makes them *a fortiori* independently patentable over the art of record. Accordingly, Applicants respectfully request that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

***Conclusion***

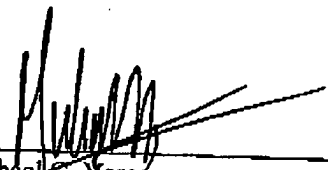
19. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

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20. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

Respectfully submitted,



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